IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO: 20557 of 1996

Between:

Sk.Subhani, S/o Sk.Abdullah,
Ex.Casual Mazdor of Guntur Telecome District, R/o Guntur District.

.... PETITIONER

AND

1 Shri A.Prabhakar Rao, Regional Labour Commissioner(C) &

Arbitrator, ATI Campus, Hyderabad.
2 The Asst.Labour Commissioner(C), Gandhi Nagar, Vijayawada

3 The General Manager, Telecom, Guntur.
4 The Secretary, Ministry of Labour, Govt. of India, New Delhi

.... RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly a writ, in the nature of mandamus, directing the 3rd respondent to place before the arbitrator any material relating to the petitioner's working particulars, if any obtained from the Railway Electrification Project Authorities within a period of say, one month

from the date of receipt of the order herein declaring that the 3rd respondent's Lr.No.TDG-GT/LC/E-1/SKS/93-94/15, dt.15.03.96 (Annexure P-20) is malicious and mala fide as calculated to frustrate the arbitration and to direct the 1st respondent arbitrator to ignore the same as pass the award within a month thereafter and to get it published in the official gazette for communication to the parties concerned, or, alternatively to direct the 2nd respondent, viz., the Assistant Labour Commissioner (Central), at Vijayawada who was the conciliation officer in the matter to report the case to the Central Labour Ministry, i.e., 4th respondent herein, to refer the dispute for adjudication by the Industrial Tribunal at Hyderabad besides granting any other appropriate relief awarding exemplary costs for making male fide efforts to frustrate the arbitration proceedings as well as Advocates fee.

Counsel for the Petitioner: MR.C.SURYANARAYANA

Counsel for Respondent No.1: None Appeared

Counsel for the Respondent No.2: G.P for Labour

Counsel for Respondent No.3: Mr.R.S.Murthy

Counsel for Respondent No.4: The Standing Counsel for C.G.

The Court made the following:

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O R D E R: -

The writ petition is filed seeking the following relief: -

"A Writ of Mandamus directing the third respondent to place before the Arbitrator any material relating to the petitioner's working particulars, if any, obtained from the Railway Electrification Project authorities within a period of say, one month from the date of receipt of the order herein declaring that the third respondent's Lr.No.TDG-GT/LC/E-1/SKS/93-94/15, dated 15.03.1996 (Annexure P-20) is malicious and mala fide as calculated to frustrate the Arbitration and to direct the first respondent Arbitrator to ignore the same and pass the Award within a month thereafter and to get it published in the official gazette for communication to the parties concerned, or, alternatively, to direct the second respondent, viz., The Assistant Labour Commissioner (Central), at Vijayawada who was the conciliation officer in the matter to report the case to the Central Labour Ministry, i.e., fourth respondent herein, to refer the dispute for adjudication by the Industrial Tribunal at Hyderabad, besides granting any other appropriate relief".

2. The petitioner worked as a Casual Mazdoor for two or three days in a week during October and November 1985 with the Sub Divisional Officer, Telecom, Tenali. He claims to have been in casual employment for 43 days during December, 1985 and January, 1986, with his name also recorded in the Muster Rolls, for 213 days during February and September, 1986 and 256 days during October, 1986 and August, 1987. He himself admits that he fell sick from September, 1987 due to viral fever and infective hepatitis, for which, he did not obtain a doctor's certificate. According to the petitioner, on recovery from illness, he approached the "authorities" in February, 1988 and submitted a representation seeking readmission to duty.

His complaint is that the Assistant Engineer did not take him back. Thereafter, he pursued the route of incessant representations, dated 10.8.1988, 25.01.1989, 13.11.1990, 10.9.1991 and 7.5.1993. He made a further representation on 03.12.1993 and 06.5.1994. Meanwhile, he claims, his juniors in casual employment were absorbed in the department as regular employees.

3. Contending that his non-employment when he reported to duty after voluntarily abstaining in September, 1987 constitutes illegal retrenchment contrary to Section 25-F of the Industrial Disputes Act, 1947 (for short `the Act'), he lodged a claim for treatment as having been illegally retrenched and therefore, reinstatement to duty with all benefits. Having failed in his pursuit of the representations route, he sought conciliation. On 12.12.1994, the parties including the management agreed to refer the matter to arbitration under Section 10-A of the Act. The terms of the arbitration included authority to the Arbitrator to submit his Award within a period of three months or within such time as is extended by mutual agreement. The Arbitrator issued notice on 8.3.1995 scheduling the arbitration hearing. The petitioner put forth his version, the management their version. In the context of an additional factual plea of the petitioner that he also worked in the Railway Electrification Project for the telecom administration, the petitioner sought information from the Railway Electrification Authority for establishing his case of having worked there under the administrative control of the Telecom authorities. In view of this further claim and non availability of the data in respect of this claim, no award was passed and the time agreed upon between the parties within which, the Arbitrator ought to have passed the award had elapsed. There was no agreed extension of time for the Arbitrator to pass the award and therefore, the Arbitrator became functus officio. The writ petition is filed in this context.

4 . The very claim of the petitioner is not only stale, but also misconceived. The petitioner on his own volition did not report to casual employment from September, 1987 ostensibly because he was down with viral fever and infective hepatitis. Such an event

cannot constitute retrenchment of the petitioner from service by the Telecom department, on any reckoning or interpretation of the admitted factual scenario. However, under a persistent misconception, he was seeking the reliefs that could be sought on illegal retrenchment, under the provisions of the Act. The move towards conciliation and the aborted arbitration exercise was also on the fundamental premise that the petitioner was retrenched from service. The arbitration itself came to an end on efflux of time and the inability of the Arbitrator to pass an award within the time frame permitted under the arbitration agreement and in the context of fact situation that the parties have not agreed for extension of time for passing of the award.

5. There are no merits in the writ petition. The writ petition is accordingly dismissed. No costs.

Sd/-

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 The Regional Labour Commissioner(C) & Arbitrator, ATI

Campus, Hyderabad.
2 The Asst.Labour Commissioner(C), Gandhi Nagar, Vijayawada-

520003.
3 The General Manager, Telecom, Guntur.
4 The Secretary, Ministry of Labour, Govt. of India, New Delhi-

5 The G.P for Labour, High Court of A.P.,Hyderabad,(OUT)

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